

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Electrical Equipment Company,)	C/A No.: 1:19-cv-74
)	
)	
Plaintiff,)	
)	
v.)	
)	
L. Francis Cissna, Director, United States)	
Citizenship and Immigration Services,)	
)	
Defendant.)	
_____)	

COMPLAINT

Since 1926, Plaintiff Electrical Equipment Company (“EEC”) has provided comprehensive solutions for major electrical engineering projects. It recently sought to employ a *sales engineer* to service a product line. EEC required the sales engineer to have a degree in engineering because the employee must be able design engineering solutions, *sell* those solutions, and oversee their execution. Simply said, EEC requires its salesman to be an engineer. EEC identified an employee who would fit the qualifications, and it applied for a visa under 8 U.S.C. § 1101(a)(15)(h)(1)(b) for him.

The Defendant agency denied the visa, finding that the position did not require a college degree. The agency essentially found that an engineer is not required to have a college degree. Under the relevant law, common sense, and the Agency’s own regulations, this is an absurd holding. For the reasons below, this Court should set aside the final agency action, order the Agency to grant the application, and award EEC attorney’s fees and costs.

PARTIES

1. Plaintiff Electrical Equipment Company (“EEC”) is incorporated under the laws of North Carolina with its principal place of business in North Carolina.
2. Defendant L. Francis Cissna is the Director of United States Citizenship and Immigration Services. He is in charge of all adjudications and processing for visas or status under 8 U.S.C. § 1101(a)(15)(H).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this case under 28 U.S.C. § 1331. *Califano v. Sanders*, 430 U.S. 99, 106 (1977). Under its federal question jurisdiction, this Court can hear claims under the Administrative Procedure Act (5 U.S.C. § 501, *et seq.*), and it has jurisdiction to provide declaratory relief under 28 U.S.C. § 2201.
4. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(A) because the Defendant does business in Durham County, North Carolina, at the United States Citizenship and Immigration Services’ Raleigh-Durham Field Office.
5. No statute or regulation requires an administrative appeal. Thus, Plaintiff has exhausted all administrative remedies or constructively exhausted all administrative remedies. *Darby v. Cisneros*, 509 U.S. 137 (1993).

FACTS

6. EEC was founded in 1926. For over 90 years, EEC has acted as an electrical equipment company focusing on industrial automation and electric motion solutions.
7. EEC prides itself in providing its customers a comprehensive solution. EEC provides customers onsite assessments, performance evaluations and data driven

recommendations. In light of this unique model, EEC requires its sales team to have engineering degrees.

8. In 2018, EEC was seeking a Networks, Security, and Information Solutions Engineer to engage as a sales engineer.
9. The job requirements for this position required a bachelor's degree in electrical engineering, industrial engineering, computer science or information technology.
10. The position was tasked with responsibility for leading business and sales related to a handful of specific information technology solutions.
11. EEC identified a beneficiary with the necessary requirements for the position and it offered him the job.
12. However, the individual is a foreign national lawfully present in the United States in non-immigrant status.
13. As such, EEC would need to get permission from the United States Citizenship and Immigration Services ("the Agency") to employ him.
14. Visas under 8 U.S.C. § 1101(a)(15)(H)(1)(B) ("H1B Visas") are available for occupations that qualify as "specialty occupations."
15. Generally speaking, a specialty occupation is one that requires a bachelor's degree or equivalent experience. 8 U.S.C. § 1184(h).
16. Congress allocates only 65,000 H1B visas per year. However, congress allocates an additional 20,000 H1B visas if the employee has a master's degree or higher from a United States institution of higher education. 8 U.S.C. § 1184(g)(1).

17. For the last three years, employers have filed 232,973 H1B visa petitions (2015), 236,444 H1B Visa petitions (2016), and 198,460 H1B Visa petitions. Notice of Proposed Rulemaking, 83 Fed. Reg. 62406, 62422 (Dec. 3, 2018).
18. Because the Agency receives more petitions than visas available, it conducts a lottery to determine which petitions may be eligible for an H1B Visa. *Id.* at 62406-08.
19. Getting picked in the lottery alone is a significant, albeit random, accomplishment. Once a petition is “picked” in the lottery, the Agency reviews it for eligibility. *Id.*
20. The employer (or visa petitioner) must prove that the position is a specialty occupation by a mere preponderance of the evidence.
21. If the Agency grants the H1B visa petition, it accords up to six years of work authorization and immigration status to the beneficiary. 8 U.S.C. § 1184(g).
22. EEC filed a visa petition on behalf of its employee on April 2, 2018.
23. The Agency picked EEC’s visa petition in the lottery.
24. The Agency then requested additional information.
25. EEC timely responded.
26. The Agency denied EEC’s visa petition.
27. The Agency’s denial did not consider all of the evidence in the record.
28. The Agency’s denial found that EEC’s proffered position was not a specialty occupation because a sales engineer—a position requiring a degree in engineering—did not require a college degree.
29. The Agency’s denial creates new legislative rules without going through notice and comment rulemaking.
30. The Agency’s denial is arbitrary and capricious.

FIRST CAUSE OF ACTION
(Administrative Procedure Act)

31. EEC restates all allegations above as though restated here.
32. The Agency's denial is a final agency action. 5 U.S.C. § 702
33. The Agency's denial has aggrieved EEC.
34. The Agency's denial is arbitrary and capricious under 5 U.S.C. § 706(2)(A)-(F).
35. A final agency action is arbitrary and capricious if:

the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
36. The Agency's denial is arbitrary and capricious because it entirely failed to consider the fact that EEC sought an engineer, which is a profession expressly identified by regulation as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(ii).
37. The Agency's denial is arbitrary and capricious because its explanation is contrary to the evidence that indicates the position required a degree in engineering.
38. The Agency's denial fails to consider an important aspect of the problem because it failed to consider EEC's actual job requirements (which required a college degree in engineering)
39. The Agency's denial is arbitrary and capricious because it is so implausible that a position that requires knowledge of engineering does not require a college degree and the denial cannot be ascribed to a difference in view or agency expertise.

40. The agency's denial is without observance of procedure required by law because it is applying legislative rules that did not go through notice and comment rulemaking.
41. Finally, EEC reserves the right to add additional arguments why the Agency's denial is further violative of each provision of § 706(2) upon receipt of the certified administrative record.
42. This Court should set aside the Agency's denial with instructions to order the Agency to grant the petition.
43. The Agency's denial is substantially unjustified.
44. EEC qualifies for fees under the Equal Access to Judgment Act.

PRAYER FOR RELIEF

Plaintiff EEC requests the following relief

45. An order setting aside the Agency's denial;
46. A declaration stating that a sales engineer qualifies as a specialty occupation;
47. Attorneys' fees and costs under the Equal Access to Justice Act; and
48. Any other relief necessary for justice to be served.

January 14, 2019

Respectfully submitted,

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via special appearance under LR 83.1(d)

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